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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHAUNCY LYNN JOHNSON,

Defendant and Appellant.

B264665

(Los Angeles County
Super. Ct. No. BA419478)

APPEAL from an order of the Superior Court of Los Angeles County,
Norm Shapiro, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Chauncy Lynn Johnson appeals from an order denying his petition for a recall of sentence after the trial court sentenced him to prison for six years following his plea of no contest to selling a controlled substance, having suffered a prior felony conviction. (Pen. Code, §§ 667, subd. (d), 1170.18, subd. (a); Health & Saf. Code, § 11352, subd. (a).) We affirm the order denying appellant's petition for a recall of sentence.

FACTUAL AND PROCEDURAL SUMMARY

On June 26, 2014, appellant pled no contest to selling a controlled substance and admitted a strike, and the court sentenced him to prison as previously indicated.¹

On May 4, 2015, appellant, in pro per, filed in the present case (superior court case No. BA419478) a petition for a recall of sentence pursuant to Penal Code section 1170.18, subdivision (a).² The petition alleged appellant was currently serving a sentence for the above violation of Health and Safety Code section 11352, subdivision (a).

On May 14, 2015, the trial court denied the petition on the ground appellant's conviction for a violation of Health and Safety Code section 11352, subdivision (a) did not qualify for relief under Proposition 47. On June 1, 2015, appellant filed a notice of appeal.

¹ A detailed recitation of the facts of the underlying offense is unnecessary. It is sufficient to note that in 2013, appellant sold cocaine base.

² Penal Code section 1170.18, subdivision (a) states, "A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ('this act') had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act."

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed September 21, 2015, the clerk of this court advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

“ ‘On November 4, 2014, the voters enacted Proposition 47, “the Safe Neighborhoods and Schools Act” (hereafter Proposition 47), which went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).)’ ” (*T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 649, fn. 2 (*T.W.*)). “Section 1170.18 ‘was enacted as part of Proposition 47.’ ” (*Ibid.*) “Section 1170.18 provides a mechanism by which a person currently serving a felony sentence for an offense *that is now a misdemeanor*, may petition for a recall of that sentence and request resentencing in accordance with the *offense statutes as added or amended by Proposition 47*. ([Pen. Code,] § 1170.18, subd. (a).) A person who satisfies the criteria in subdivision (a) of section 1170.18, shall have his or her sentence recalled and be ‘resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ (*Id.*, subd. (b).)” (*T.W., supra*, 236 Cal.App.4th at p. 649, fn. 2, italics added.) “The initiative [Proposition 47] . . . added sections 459.5, 490.2 and 1170.18 to the Penal Code; amended sections 473, 476a, 496 and 666 of the Penal Code; and amended Health and Safety Code sections 11350, 11357 and 11377.” (*People v. Shabazz* (2015) 237 Cal.App.4th 303, 308.)

Appellant’s petition demonstrates he was, within the meaning of Penal Code section 1170.18, subdivision (a), “currently serving a sentence for a conviction” of the felony of selling a controlled substance (Health & Saf. Code, § 11352, subd. (a)). That crime is not listed in Penal Code section 1170.18, subdivision (a), nor was Health and Safety Code section 11352, subdivision (a) added or amended by Proposition 47. It is

thus not true that “[a] person currently serving a sentence for a conviction . . . of a felony [of selling a controlled substance] . . . would have been guilty of a *misdemeanor* under the act that added this section (‘this act’) had this act been in effect at the time of the offense.” (Pen. Code, § 1170.18, subd. (a), italics added.) Proposition 47 left the offense of a violation of Health and Safety Code section 11352, subdivision (a) unchanged, and that offense is a felony. (Pen. Code, § 17, subd. (a); Health & Saf. Code, § 11352, subd. (a).) The trial court properly denied appellant’s Penal Code section 1170.18, subdivision (a) petition for a recall of sentence.

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*People v. Wende* (1979) 25 Cal.3d 436, 443; *Smith v. Robbins* (2000) 528 U.S. 259, 278-284.)

DISPOSITION

The order denying appellant’s petition for a recall of sentence is affirmed.

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JONES, J. *

We concur:

EDMON, P. J.

ALDRICH, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.